

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	00 C 5122	DATE	9/14/2000
CASE TITLE	Melanie Fawkes vs. Continental Casualty Co.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) Filed motion of [use listing in "Motion" box above.]

(2) Brief in support of motion due _____.

(3) Answer brief to motion due _____. Reply to answer brief due _____.

(4) Ruling/Hearing on _____ set for _____ at _____.

(5) Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) Trial[set for/re-set for] on _____ at _____.

(8) [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
 FRCP4(m) General Rule 21 FRCP41(a)(1) FRCP41(a)(2).

(10) [Other docket entry] Enter Memorandum Order. Continental's second effort at a responsive pleading is also stricken, and again the no-charge requirement in footnote 1 of the Order will be applicable. It can only be hoped that the third time (a new pleading that must be filed on or before September 22, 2000) will prove the charm.

(11) [For further detail see order attached to the original minute order.]

	No notices required, advised in open court.	number of notices	Document Number
	No notices required.	SEP 15 2000	
✓	Notices mailed by judge's staff.	date docketed	
	Notified counsel by telephone.		
	Docketing to mail notices.	docketing deputy initials	
	Mail AO 450 form.	9/14/2000	
	Copy to judge/magistrate judge.	date mailed notice	
SN	courtroom deputy's initials	ED-7	SN
	FILED FOR DOCKETING	00 SEP 14 PM 2:25	mailing deputy initials
	Date/time received in central Clerk's Office		

IN THE UNITED STATE DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MELANIE FAWKES,)
)
)
Plaintiff,)
)
v.) No. 00 C 5122
)
CONTINENTAL CASUALTY COMPANY,)
)
)
Defendant.)

BOOKED
SEP 15 2000

MEMORANDUM ORDER

This Court's sua sponte August 29, 2000 memorandum order ("Order") addressed the Answer and Affirmative Defenses advanced by Continental Casualty Company ("Continental") to the ERISA-based Complaint brought against it by Melanie Fawkes ("Fawkes"). As Order at 1 stated, it was "issued sua sponte to require Continental counsel to return to the drawing board to correct some obvious and substantial flaws in that responsive pleading." Now Continental's counsel has indeed returned with a revised Answer and Affirmative Defenses--but counsel's newest effort compels the issuance of still another sua sponte memorandum order.

In several respects the Order's required compliance with this District Court's L.R. 10.1 has highlighted some impermissible current denials by Continental. Thus there appears to be no way in which Continental and its counsel can deny, in the objective good faith required by Fed. R. Civ. P. ("Rule") 11, everything that Fawkes has alleged in Complaint ¶2. And no doubt

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whatever also exists on that score as to the unacceptability of
Answer ¶3:

1. If Continental's counsel had followed the plainly-marked roadmap set out in the second sentence of Rule 8(b) as the only basis for getting the benefit of a deemed denial, it is extraordinarily doubtful that the required disclaimer could have been made in objective good faith. Complaint Ex. A has all the obvious hallmarks of a summary plan description that bears the name of Computer Sciences Corporation, and unless Continental has some predicate for viewing the photocopied document as bogus it can scarcely assert that it lacks sufficient information to form a belief as to Fawkes' allegation in that respect.

2. It is troublesome to find Continental responding with a flat-out and unelaborated denial that the Complaint Ex. A document says what Fawkes has alleged in Complaint ¶3. After all, Complaint ¶3 is a direct and almost verbatim recital of the language in the "Total Disability" paragraph of that summary plan description, with the sole exception of an obvious typographical error in Fawkes' counsel having mistakenly inserted the word "disabled" in place of "qualified" in the last line of the allegation. If

that obvious mistake is indeed the flaw that has given rise to the denial, it would seem that ordinary candor would call for Continental's counsel to say just that.

It also seems possible that the straight-out denials in Answer ¶¶6, 7 and 9 are problematic in whole or in part, but that possibility can remain for future consideration.

Finally, the Order has already characterized as "really nonsensical" what Continental had earlier advanced as its Second Affirmative Defense. Yet the same contention has inexplicably reappeared as the claimed Affirmative Defense in the new pleading. To repeat, because there is no ambiguity as to whether Fawkes is claiming any rights under state law, the current Affirmative Defense is stricken.

Accordingly, Continental's second effort at a responsive pleading is also stricken, and again the no-charge requirement in footnote 1 of the Order will be applicable. It can only be hoped that the third time (a new pleading that must be filed on or before September 22, 2000) will prove the charm.


Milton I. Shadur
Milton I. Shadur
Senior United States District Judge

Dated: September 14, 2000